

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5059

IN THE MATTER OF:

Served April 21, 1997

Application of SAFE RIDE )  
SERVICES, INC., for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-97-03

By application filed December 31, 1996, Safe Ride Services, Inc., an Arizona corporation, seeks a certificate of authority for irregular route operations in vehicles with a seating capacity of less than 16 persons only, including the driver.

Notice of this application was served on January 7, 1997, in Order No. 4995, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and a statement addressing the effect approval of this application will have on competition.

The application is opposed by Choice American Ambulance Service, Inc. (Choice), and Yellow Holding, Inc., trading as Yellow Transportation (Yellow Holding) (collectively protestants). Choice is a second-tier subsidiary of Yellow Holding. Yellow Holding is the parent of Yellow Bus Service, Inc., trading as Yellow Transportation (Yellow Bus), WMATC Carrier No. 280. Protestants seek an oral hearing, an order directing applicant to file additional information and an order denying the application.

SUMMARY OF EVIDENCE

Applicant is a wholly-owned subsidiary of Laidlaw Medical Transportation, Inc. (Laidlaw Medical), a common carrier operating under the trade name Medtrans. Laidlaw Medical is, in turn, a wholly-owned subsidiary of Laidlaw Transit, Inc.,<sup>1</sup> which owns National School Bus Service, Inc. (NSBS), WMATC Carrier No. 100.

Applicant's president, Louis Levy, has controlled WMATC carriers in the past. He was the controlling shareholder of Air Couriers International Ground Transportation Services, Inc. (ACIGTS), WMATC Carrier No. 55, and United Management Corporation, (UMC), WMATC

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<sup>1</sup> Laidlaw Transit operates through various subsidiaries and has been described as the largest provider of school bus transportation in the United States. See Laidlaw Acquisition Corp. v. Mayflower Group, Inc., 636 F. Supp. 1513 (S.D. Ind. 1986). Another Laidlaw Transit subsidiary, Laidlaw Transit (Virginia) Inc., held Certificate No. 64 until its transfer to Williams Bus Lines, Inc., last year. In re Laidlaw Transit (Virginia) Inc., & Williams Bus Lines, Inc., No. AP-96-46, Order No. 4957 (Oct. 24, 1996).

Carrier No. 172, each of which operated under the trade name Passenger Express. ACIGTS's certificate of authority was revoked upon its merger into UMC in 1992.<sup>2</sup> UMC's certificate of authority was voluntarily terminated in 1994.<sup>3</sup> Applicant was conditionally granted operating authority in 1995,<sup>4</sup> but because applicant failed to timely satisfy the conditions, the application was deemed denied.<sup>5</sup>

Applicant proposes commencing operations with eight sedans and three vans. Applicant's proposed contract tariff contains per capita rates for non-emergency transportation to and from medical facilities.

Under the proposed contract, Safe Ride is obligated to provide to members of the Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., non-emergency "Ambulatory and Wheelchair" transportation services, "excluding those . . . medically necessary." Safe Ride "affirms that all drivers are drug and alcohol tested, FBI fingerprinted, trained through the National Safety Council and, after one month of employment, CPR trained and certified."

Applicant filed a balance sheet as of September 30, 1996, showing assets of \$4,415,815; liabilities of \$1,437,960; and equity of \$2,977,855. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$310,361; other income of \$7,259; costs and expenses of \$269,662; and net income of \$47,958.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder.

Applicant avers through a late-filed statement that approval of the application will not result in diversion of passengers from existing carriers inasmuch as no existing carrier is providing service to the party with whom applicant has contracted.

#### I. Standing

The Commission's Rules of Practice and Procedure provide that a protest against the issuance of a certificate of authority may be filed "by any person having a substantial interest therein."<sup>6</sup> The

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<sup>2</sup> Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express, No. AP-92-12, Order No. 3956 (June 15, 1992).

<sup>3</sup> In re United Mgmt. Corp., t/a Passenger Express, No. AP-94-29, Order No. 4328 (June 28, 1994).

<sup>4</sup> In re Safe Ride Services, Inc., No. AP-94-58, Order No. 4492 (Feb. 14, 1995).

<sup>5</sup> See Commission Regulation No. 66 (180-day limit on compliance deadline).

<sup>6</sup> Commission Rule No. 13-01.

protest must contain a concise statement clearly setting forth the substantial interest of the protestant in the proceeding.<sup>7</sup>

Choice claims it derives substantial revenue from providing non-emergency medical transportation service. Both protestants assert they have invested substantial sums in transportation equipment and facilities and have an interest in assuring that passengers in need of non-emergency medical transportation have access to safe and adequate service. On the other hand, neither protestant possesses a certificate of authority from this Commission, and there is no evidence in the record establishing that either is otherwise authorized to transport passengers for hire in the Metropolitan District. Consequently, we hold that neither protestant has a substantial interest in the outcome of this proceeding within the meaning of Rule 13.<sup>8</sup>

Although Yellow Bus has a certificate of authority, Yellow Bus is not listed as one of the protestants, and Commission precedent holds that a protestant, such as Yellow Holding, may not assert the interest of another as grounds for standing.<sup>9</sup> Since Yellow Bus is not protesting this application we do not decide whether it has an interest in this proceeding.

Even if protestants held certificates of authority, the joint protest would not be actionable. The protest alleges that a noncompetition agreement signed by Safe Ride's parent, Laidlaw Medical, prevents Safe Ride from competing against Choice in the Washington, DC, area. Protestants failed to submit a copy of the agreement as required by Commission Regulation No. 54-04(a). We cannot enforce an agreement we have not seen.<sup>10</sup>

The protest also alleges that Safe Ride has not sufficiently established the fitness of its facilities and vehicles. We do not see how this affects protestants. The party in interest on this issue is Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. As the other party to Safe Ride's proposed contract tariff, Kaiser represents

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<sup>7</sup> Commission Rule No. 13-02.

<sup>8</sup> See Madison Limo. Serv., Inc., v. Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, No. FC-92-01, Order No. 3903 (Mar. 17, 1992) (carrier without authority to operate in Metropolitan District lacked standing to file complaint against WMATC carrier); In re Washington Tours, Inc., No. AP-83-07, Order No. 2438 (July 8, 1983) (carrier without authority to operate in Metropolitan District lacked standing to protest application for WMATC operating authority). At a minimum, protestants would be expected to have an application for operating authority on file, with a proposed tariff for the same or similar service.

<sup>9</sup> In re D.C. Ducks, Inc., No. AP-94-21, Order No. 4361 (Aug. 9, 1994); In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, No. AP-91-44, Order No. 3884 (Feb. 11, 1992).

<sup>10</sup> This is not to say we would ever enforce such an agreement.

the interests of Safe Ride's passengers. Kaiser has specific knowledge of the needs of those passengers and is in the best position to determine whether those needs are being met. Kaiser was notified of this proceeding but has expressed no concern with the facilities and vehicles described in Safe Ride's application. Of course, all applicants, including Safe Ride, are required to file proof that their vehicles have passed safety inspection.

Protestants' further allege that Safe Ride's proposal to equip its vehicles with a "CPR mask" and "first aid kit" violate Commission Regulations Nos. 55-09 and 63-05, which prohibit WMATC carriers from holding themselves out, in a tariff or advertising, as being capable of rendering life support service.<sup>11</sup> Inasmuch as we would not approve a proposed tariff containing "a rate, rule or regulation for life support service" -- even a tariff such as this which excludes "medically necessary" transportation -- we do not see how approving this application would adversely affect the protestants.<sup>12</sup>

The protest shall be denied.<sup>13</sup>

## II. The Application

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Based on the evidence in this record, and subject to the condition that applicant shall remove from its contract tariff any and all references to CPR training and certification, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

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<sup>11</sup> We should point out that our regulations do not prohibit carriers from equipping their vehicles with simple first-aid kits. See In re Rules of Prac. & Proc. & Regs., Nos. 51, 55 & 63, No. MP-96-21, Order No. 4856 (May 22, 1996) (carriers still required to provide aid expected of any common carrier).

<sup>12</sup> The remedy for an unacceptable tariff is the prescription of one that is acceptable, not denial of operating authority. See In re Seth, Inc., t/a Kids Kab, No. AP-93-40, Order No. 4243 at 3 (Feb. 9, 1994) (discussing remedy for unreasonable tariff).

<sup>13</sup> Our holding that protestants lack standing moots protestants' request for additional information and oral hearing, as well as protestants' opposition to applicant's Motion for Leave to Late File Statement Addressing Effect on Competition.

Because applicant is under common control with other carriers, including NSBS, this application is also governed by Title II, Article XII, Section 3(a)(iii),<sup>14</sup> which provides that a "carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." The Commission may approve such a transaction if it is consistent with the public interest.<sup>15</sup> The public interest analysis under Article XII, Section 3, focuses on the acquiring party's fitness, the resulting competitive balance and the interests of affected employees.<sup>16</sup>

The relevant party acquiring control in this case is Laidlaw Transit. Our current finding of applicant's fitness permits an inference of the acquiring party's fitness.<sup>17</sup> Moreover, a presumption of fitness obtains where, as in this case, the acquiring party once controlled another WMATC carrier previously found fit.<sup>18</sup>

There should be no adverse effect on competition. Safe Ride and NSBS will not operate in the same market. Safe Ride and NSBS do not offer the same service. Safe Ride proposes to transport the handicapped and disabled to and from medical facilities in sedans and vans based on a per capita rate. NSBS provides charter service in school buses at a group rate. Neither service can be viewed realistically as a substitute for the other.

Transactions which do not increase market share give the Commission little cause for concern.<sup>19</sup> The Commission may safely approve even those transactions which tend to increase market share as long as there is sufficient intermodal and/or intramodal competition to check any anticompetitive effects that such transactions might otherwise produce.<sup>20</sup> The large number of WMATC carriers competing in both markets indicates that common control of Safe Ride and NSBS will produce little or no adverse impact on competition. On the contrary,

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<sup>14</sup> In re LCG, Inc., t/a Laurel Consulting Group, No. AP-96-63, Order No. 4991 (Jan. 6, 1997); In re Washington Shuttle, Inc., t/a Supershuttle, No. AP-96-13, Order No. 4966 (Nov. 8, 1996); In re Yellow Bus Serv., Inc., t/a Yellow Transp., No. AP-94-44, Order No. 4434 (Nov. 9, 1994); In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994).

<sup>15</sup> Compact, tit. II, art. XII, § 3(c).

<sup>16</sup> Order No. 4991; In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd., & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

<sup>17</sup> Order No. 4991; Order No. 4966; Order No. 4434; Order No. 4361.

<sup>18</sup> Order No. 4991; Order No. 4354.

<sup>19</sup> Order No. 4926.

<sup>20</sup> Id.

a grant of operating authority to Safe Ride should increase competition in the market for per capita transportation of the handicapped and disabled.

It is presumptively in the interest of its employees for Safe Ride to acquire valuable new operating rights.<sup>21</sup>

For the foregoing reasons, the Commission finds that the proposed common control is consistent with the public interest.

Although the record does not indicate that applicant shares office space with NSBS, each carrier, nonetheless, is admonished to keep its assets, books and operations completely separate from the other's. Sharing of office space is permissible, but this should not be construed as permission to share revenue vehicles or operating authority.<sup>22</sup>

THEREFORE, IT IS ORDERED:

1. That the protest of Choice and Yellow Holding, including the request for oral hearing and order requiring applicant to file additional information, is denied.

2. That Safe Ride's Motion for Leave to Late File Statement Addressing Effect on Competition is granted.

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 293 shall be issued to Safe Ride Services, Inc., 9525 E. Doubletree Ranch Road, Suite 110, Scottsdale, AZ 85258.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

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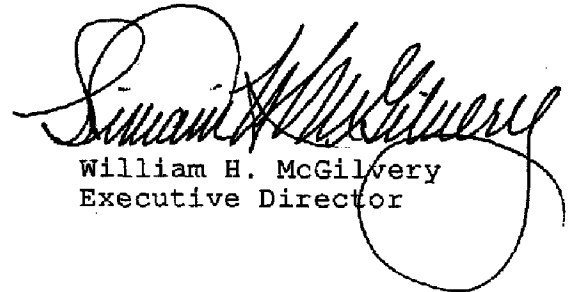
<sup>21</sup> Order No. 4434; Order No. 4361; Order No. 4354.

<sup>22</sup> Order No. 4991; Order No. 4966; Order No. 4434; Order No. 4354.

6. That the tariff filed in response to the foregoing paragraph shall comply in all respects with Regulation No. 55-09, which states that no tariff may contain a rate, rule or regulation for life support service.

7. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery  
Executive Director